

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Ninehouser, Joseph

(b) County of Residence of First Listed Plaintiff Cumberland County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Paul C. Siegrist, Esq. Stone, Wiley & Linsenbach, P.C.
3 N. Baltimore St. Dillsburg, PA 17019 (717)432-2089

DEFENDANTS

Lower Allen Township d/b/a Lower Allen Township Police
and Read, JeremyCounty of Residence of First Listed Defendant Cumberland
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability		INTELLECTUAL PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	LABOR	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input checked="" type="checkbox"/> 440 Other Civil Rights	IMMIGRATION	FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations			<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment			<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other			
	<input type="checkbox"/> 448 Education			
	PRISONER PETITIONS			
	<input type="checkbox"/> 463 Alien Detainee			
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	Other:			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			
	<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC Section 1983

Brief description of cause:

Fourth and Fourteenth Amendments to US Constitution

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09-18-2023

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG PA

OCT 03 2023

PER
DEPUTY CLERK

JOSEPH A. NINEHOUSER,
PLAINTIFF

v.

JEREMY READ, individually and
in his official capacity as an officer for
Lower Allen Township Police Department;

LOWER ALLEN TOWNSHIP d/b/a
Lower Allen Police Department,
DEFENDANTS

:
: CIVIL ACTION
:

: DOCKET NO. 1:23-cv-1639

Judge Kane

: JURY TRIAL DEMANDED
:
:
:

COMPLAINT

AND NOW comes the Plaintiff, Joseph A. Ninehouser, by and through his undersigned counsel, Paul C. Siegrist, Esquire and the law firm of Stone Wiley & Linsench, PC, and avers as follows:

JURISDICTION AND VENUE

1. This action is brought pursuant to U.S.C. § 1983.
2. Jurisdiction is founded upon 28 U.S.C. § 1331, 1343 and 1367.
3. Venue is proper in this Court, as all parties are located within the Middle District of Pennsylvania, and the cause of action arose in the Middle District of Pennsylvania.

PARTIES

4. Plaintiff, Joseph A. Ninehouser (hereinafter, "Joe"), is an adult individual, who lives in Mechanicsburg, Cumberland County, Pennsylvania.
5. Defendant, Jeremy Read, (hereinafter, "Defendant Read"), is an adult individual, who,

during all relevant times, was employed by the Lower Allen Township Police Department, as a police officer. All of Defendant Read's actions or inactions were taken under color of state law.

6. Defendant, Lower Allen Township, a first-class township and a municipal corporation (hereinafter the "Defendant Township") has a principal address of 2233 Gettysburg Road, Camp Hill, PA 17011. The Township owns and operates Lower Allen Township Police Department also located at 2233 Gettysburg Road, Camp Hill, PA 17011.
7. Lower Allen Township Police is a full-service police department which operates 24 hours a day, seven days a week with its compliment of twenty-four sworn officers.

MATERIAL FACTS

8. On August 10, 2023, while on duty, Defendant Read was driving south bound on Wesley Drive in Lower Allen Township's jurisdiction.
9. Defendant Read observed a black Dodge Ram pickup truck execute a left turn onto Wilson Lane "slower than average" and began following the truck.
10. Defendant Read observed the truck cross over a double yellow line and make a wide turn and initiated a traffic stop by activating his lights and siren.
11. The truck pulled into the parking lot of Sun Guild apartments and parked in front of an entry to a walkway.
12. Defendant Read's body camera became active upon entering the parking lot.
13. The driver, Josphe Ninehouser, opened the driver-side door and put his left foot out.
14. Defendant Read shouted "stay in the car" then "close the door".
15. Joe responded to Defendant Read by saying "What?"
16. As Joe stepped out of his truck, Defendant Read yelled "Stay in the car and close the

door” and pointed his service pistol at Joe.

17. Joe asked Defendant Read “Why?”

18. Joe closed the door to his truck and Defendant Read shouted for Joe to go back to his car.

19. Joe casually walked towards the apartments with is back to Defendant Read.

20. Defendant Read holstered his pistol and drew his taser and ordered Joe to stop and put his hands in the air.

21. Joe, obeying his command, stopped walking and turned toward Defendant Read and placed the keys to his vehicle on top of a wall and raised in hands.

22. Defendant Read then says “hands on your head.”

23. Joe with his hands still raised and facing Defendant Read tried to speak to Defendant Read respectfully by saying “Sir”, but is interrupted by Defendant Read who demanded he put his hands on his head and again threatened to tase Joe.

24. Joe calmly and slowly lowered his hands which were raised down onto his head.

25. Then Defendant Read asked Joe to turn around by screaming “turn around, turn around”.

26. About 1 second after asking him to turn around, Defendant Read discharges his taser into the lower chest area of Joe while his hands were on his head.

27. At all times Joe was never aggressive nor combative.

28. Joe did not make any furtive movements and maintained a clam demeanor.

29. At all relevant times, Joe was not under arrest.

30. After the taser prongs stuck into Joe, Joe tried to keep his hands on his head, but Defendant Read activated the electrical charge and began shocking Joe.

31. Due to the pain Joep suffered, he removed his hands from his head and reached toward his stomach where he was being shocked.

32. Defendant Read demanded Joe keep his hands on his head, and Joe complied.
33. Defendant Read then orders Joe to turn around and Joe responds “My hands are on my head sir”.
34. Defendant Read demanded that Joe lie on the ground on his stomach.
35. Joe attempted to comply, but the taser prong was stuck in his belly. Laying on his stomach increased the pain he was experiencing.
36. Joe positioned himself into a ‘push-up’ position keeping his stomach raised off the ground.
37. Defendant Read continued to scream at Joe to lie on the ground in a position that would require Joe’s stomach to lay flat.
38. Attempting to comply Joe reached to pull out the taser prong, but Defendant Read order Joe to not reach towards his stomach.
39. Joe ultimately laid flat on the ground and endured more pain and the weight of his body caused the taser prong to impale him deeper.
40. Joe was not arrested until after the above-stated events.

COUNT I
Plaintiff v. Defendant Read
4th Amendment (Excessive Force)
Pursuant to 42 U.S.C. § 1983

41. Excessive force claims against police officers are analyzed under the Fourth Amendment’s objective reasonableness standard. See Graham v. Connor, 490 U.S. 386, 388 (1989).
42. To state a claim for excessive force under the Fourth Amendment, a Plaintiff must show that a seizure occurred and that it was objectively unreasonable. See Curley v. Klem, 499 F.3d 199, 203 (3d Cir. 2007).

43. The test of Fourth Amendment reasonableness of force used during a seizure is whether, under the totality of the circumstances, an officer's actions are objectively reasonable in light of facts and circumstances confronting him, without regard to his underlying intent or motivations. See Kopec v. Tate, 361 F.3d 772, 776 (3d Cir. 2004); Graham, 490 U.S. at 397.
44. Defendant Read used physical force against Joe by electrocuting him with a taser.
45. Defendant Read did not enjoy a lawful privilege to use force against Joe, because Joe was not under arrest, but instead was only detained.
46. Defendant Read did not have lawful privilege to use force against Joe because Joe did not present as a physical threat to the Officer or to others.
47. Even if it is determined that Defendant Read was entitled to use force against Joe, the force used was excessive and unlawful, in that it was largely intended to cause physical pain and injury in response to Joe not responding fast enough to Defendant Read's commands.
48. As a direct and proximate result of Defendant Read's conduct, Joe suffered and will continue to suffer embarrassment, humiliation, physical and psychological harm, pain and suffering, and financial harm, some or all of which may be permanent.

COUNT II
Plaintiff v. Defendant Read
Fourth and Fourteenth Amendments—Malicious Prosecution
Pursuant to 42 U.S.C. § 1983

49. To prevail on a Section 1983 malicious prosecution claim, a Plaintiff must establish that:
- (1) Defendants initiated a criminal proceeding; (2) the criminal proceeding ended in Plaintiff's favor; (3) the proceeding was initiated without probable cause; (4) Defendants acted maliciously or for a purpose other than bringing plaintiffs to justice; and (5)

Plaintiff suffered a deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding. See DiBella v. Borough of Beachwood, 407 F.3d 599 (3d Cir. 2005).

50. A police officer may be held to have “initiated” a criminal proceeding if he knowingly provided false information to the prosecutor or otherwise interfered with the prosecutor’s informed discretion. See Reed v. City of Chicago, 77 F.3d 1049, 1054 (7th Cir. 1996).
51. Here, Defendant Read improperly charged Joe with Resisting Arrest and attempted to bias the prosecutor by including a false statement in the Police Criminal Complaint, i.e., “with the intent on preventing a public servant, namely Corporal Jeremy Read, from effecting a lawful arrest/discharging of duty, [Joe] did create a substantial risk of bodily injury to [Defendant Read] . . . requiring substantial force to overcome resistance.”
52. Defendant Read failed to inform the prosecutor that Joe was not under arrest when he discharged his taser.
53. Defendant Read failed to inform the prosecutor that Joe was complying with his commands when he was tased.
54. Defendant Read lacked probable cause to charge Joe with Resisting Arrest under Section 5104 of the Crimes Code.
55. The charge of resisting arrest was dismissed in Joe’s favor at the preliminary hearing.
56. Joe was charged with Resisting Arrest for the purpose of justifying Defendant Read’s excessive use of force rather than to bring Joe to justice.
57. As a direct and proximate result of the Defendants’ conduct, Joe suffered, and will continue to suffer, embarrassment, humiliation, physical and psychological harm, pain and suffering, and financial harm, some or all of which may be permanent.

58. As a direct and proximate result of the Defendant's conduct, Joe has incurred attorneys' fees and other costs associated with his defense.

COUNT III

**Plaintiff v. Defendant Lower Allen Township
d/b/a Lower Allen Township Police Department
Fourth and Fourteenth Amendments—Supervisory Liability
Pursuant to 42 U.S.C. § 1983**

59. The International Association of Chiefs of Police ("IACP") have developed model law enforcement policies, establishing minimum industry standards – the level of professionalism that law enforcement agencies should achieve.
60. In Pennsylvania, chiefs of police and law enforcement, associated with the Commission on Accreditation for Law Enforcement ("CALEA") and/or The Pennsylvania Law Enforcement Accreditation Program ("PLEAC") have developed model law enforcement policies, establishing minimum industry standards.
61. Defendant Township knowingly failed to maintain policies, practices, and training that meet the minimum accreditation standards set by IACP, PLEAC, CALEA, or similar type accrediting organizations.
62. The Municipal Police Officers' Education and Training Commission ("MPOETC"), develops the minimum required training program for municipal police officers – Act 120 (certification) and Act 180 (annual update training).
63. Merely sending a police officer to training, however, does not satisfy the training obligations.
64. Rather, the Defendant Township., and not MPOETC, remain responsible for ensuring that their respective police officers are properly trained, remain properly trained, and act in accordance with said training.

65. Regardless, Defendant Read's conduct did not comport with MPOETC training standards.
66. The Defendant Township maintained policies, practices, and customs, which were the moving force that resulted in Joe's constitutional rights being violated.
67. The Defendant Township failed to implement the policies identified herein.
68. It is believed that discovery will reveal, and therefore averred, that Defendant Township failed to implement a policy, enforce a policy, or train officers, on the Fourth or Fourteenth Amendments to the U.S. Constitution.
69. It is believed that discovery will reveal, and therefore averred, that Defendant Township failed to implement an effective process to ensure that policies and training are followed by its law enforcement personnel.
70. It is believed that discovery will reveal, and therefore averred, that when it has been determined that officers have violated the constitutional or statutory rights of persons, or when officers have been named in citizen complaints, or when the Defendant Township has settled civil lawsuits, the Defendant Township has not required officers to receive corrective or additional training.
71. It is believed that discovery will reveal, and therefore averred, that the Defendant Township did not follow its internal affairs policy and investigate, discipline, or retrain Defendant Read for the conduct discussed in this Complaint.

COUNT IV
Plaintiff v. Defendant Read
Assault
Pursuant to Pennsylvania Common law

72. Assault is an intentional attempt to cause physical injury to another. See Reink v. City of Pittsburgh, 641 A.2d 289, 293 (Pa. 1994).

73. Defendant Read committed assault against Joe when he engaged in conduct that placed him in fear that he would be subjected to violence and physical injury.

74. Defendant Read did not enjoy a privilege to use force against Joe.

75. Joe did not consent to force being used against him.

76. Defendant Read engaged in willful misconduct.

77. Pursuant to 42 Pa. Cons. Stat. Ann. § 8550, which abolishes immunity for willful misconduct engaged in by local agency employees, Defendant Read is not immune from suit.

78. As a direct and proximate result of the Defendant's conduct, Joe suffered, and will continue to suffer, embarrassment, humiliation, physical and psychological harm, pain and suffering, and financial harm, some or all of which may be permanent.

79. As a direct and proximate result of the Defendant's conduct, Joe has incurred attorneys' fees and other costs associated with his defense.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor as follows:

A. **Declaratory Judgment:** Providing that the Defendants' individual and collective conduct violated Derek's Federal Constitutional rights, and his rights pursuant to the laws of the Commonwealth of Pennsylvania;

- B. **Compensatory Damages:** Including, but not limited to, the monetary value associated with the following: violations of legal rights, emotional distress, emotional injury, embarrassment, loss of reputation, and related physical injuries;
- C. **Punitive damages** as permitted by law;
- D. **Equitable Relief:** An admission of the allegations stated in the Complaint, in writing, and an oral and written apology for same, in person, from the Defendants;
- E. **Attorney's Fees and Costs;** and
- F. **Discretionary Damages and Relief:** Such other financial or equitable relief that the Court deems reasonable and just.


Jury Trial Demand

Plaintiff respectfully requests a trial by jury on all claims/issues in this matter that may be tried to a jury.

Date:

9/25/23

BY:



Paul C. Siegrist, Esquire

I. D. #209404

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